NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Chrysler, LLC and Local 412, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL—CIO. Case 7–CA–51553

January 6, 2010

# **DECISION AND ORDER**

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On May 1, 2009, Administrative Law Judge Ira Sandron issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board<sup>1</sup> has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this decision and to adopt the recommended Order as modified.

We adopt the judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to comply with the Union's information requests set forth in its letters dated July 17, 18, and 28, 2008, concerning Magna Corporation, MSX International, FEV Engine Technology, EDAG Corporation, AMR Automotive Research India Private Limited, INCAT, and A.R.D.C.<sup>2</sup>

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Narricot Industries, L.P. v. NLRB, , 2009 WL 4016113 (4th Cir. Nov. 20, 2009); Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), cert. granted \_\_, 2009 WL 1468482 (U.S. Nov. 2, 2009); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213); Teamsters Local 523 v. NLRB, F.3d , 2009 WL 4912300 (10th Cir. Dec. 22, 2009). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

<sup>2</sup> The Respondent has not argued, on exception, that the Union waived its right to the information. Further, in adopting the judge's findings, we disavow his reliance on the Respondent's failure to raise lack of relevance in its communications with the Union about the information requests, to the extent the judge's reliance on that factor can be interpreted as shifting the burden from the Union to establish relevance.

With respect to the Respondent's argument that the complaint allegations should be deferred to the parties' grievance/arbitration proce-

However, we reverse the judge and find that the Respondent did not violate Section 8(a)(5) and (1) by failing to comply with the Union's information request set forth in its July 28, 2008 letter concerning the Respondent's Envi hybrid-vehicle program.

The Union sought the following information pertaining to the Envi program: the program objectives; verification that the International Union attended meetings to discuss the start of the program; a Chrysler development system breakdown, or timeline, of the program; a list of all departments (union and nonunion) and organizations working on the program, including outside parties; and organizational charts for each such department. The judge found that the requested information was "largely" presumptively relevant. The remaining information, he found, is essentially subcontracting information, which the Board has held is not presumptively relevant. Citing Disneyland Park, 350 NLRB 1256 (2007), he stated that the burden therefore fell on the Union to establish the relevance of this information. He concluded that the Union made the required showing, by referencing the collective-bargaining agreement and several memoranda of understanding between the Respondent and the International Union, and by stating that the information was necessary to investigate possible violations of those The Respondent excepts, contending that agreements. the entire Envi request pertained to matters outside the bargaining unit and the requested information was, there-

dure, under longstanding Board policy, allegations involving an employer's refusal to furnish information requested by an exclusive collective-bargaining representative are not deferrable. See, e.g., *Team Clean, Inc.*, 348 NLRB 1231 fn. 1 (2006). See also *DaimlerChrysler Corp.*, 344 NLRB 1324 fn. 1 (2005); *DaimlerChrysler Corp.*, 331 NLRB 1324 fn. 3 (2000), enfd. 288 F.3d 434 (D.C. Cir. 2002). Member Schaumber views the information requests as covered by the parties' contractual arbitration clause and would defer the requests to arbitration. He recognizes, however, that Board precedent is to the contrary. Accordingly, for institutional reasons, he concurs in finding that the Respondent violated Sec. 8(a)(5) by failing to furnish this requested information.

In agreeing with the judge that the Respondent's failure to comply with the Union's information requests does not warrant a broad order restraining the Respondent from committing "any" violation of the Act, Member Schaumber observes that the Board's authority regarding unfair labor practices does not include "authority to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct.' NLRB v. Express Publishing Co., 312 U.S. 426, 433 (1941). Further, as fully set forth in his dissenting opinion in Postal Service, 345 NLRB 409, 412-413 (2005), Member Schaumber notes that the Supreme Court has made clear that broad orders must be reserved for egregious cases in which the violations are so severe or so numerous and varied as to truly manifest a general disregard for employees' fundamental employee rights. Hickmott Foods, Inc., 242 NLRB 1357 (1979). In Member Schaumber's view, the failure to respond to several information requests in violation of a single subsection of Sec. 8(a) does not meet the stringent Hickmott standard.

fore, not presumptively relevant. The Respondent further contends that the Union and the General Counsel failed to meet their burden of establishing the relevance of the information. We find merit in the Respondent's exceptions.

The information concerning the Envi program does not pertain to employees in the bargaining unit. At the hearing, Union Representative Michael Hayes testified: "I know at this time and specifically at the time of the request and to the best of my knowledge at this time, no union represented employee is working on the program." Accordingly, the information was not presumptively relevant and the General Counsel was required to "present evidence either (1) that the [U]nion demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances." *Disneyland Park*, supra at 1258 (footnote omitted).

The General Counsel failed to make such a showing. The Respondent is a large corporation with manufacturing facilities throughout the United States. There is no record evidence that the Envi program, in whole or in part, involved the subcontracting of work within the jurisdiction of the particular bargaining unit involved in this case or that the program implicated unit employees' terms and conditions of work. We therefore find that the Respondent did not violate Section 8(a)(5) and (1) of the Act by failing to furnish the Union with the requested information concerning the Envi program.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Chrysler, LLC, Auburn Hills, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

- 1. Delete paragraph 2(b).
- 2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. January 6, 2010

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

# **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

# FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to provide information requested by Local 412, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL—CIO which is necessary for, and relevant to the Union's proper performance of its duties as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested on about July 17, 18, and 28, 2008, concerning our outsourcing of work to Magna Corporation, MSX International, FEV Engine Technology, EDAG Corporation, AMR Automotive Research India Private Limited, INCAT, and A.R.D.C. at our Auburn Hills, Michigan headquarters facility.

# CHRYSLER, LLC

Donna M. Nixon, Esq., for the General Counsel.

K.C. Hortop, Esq. (Eastman & Smith Ltd.), of Novi, Michigan, for the Respondent.

#### DECISION

### STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. The complaint, issued on December 9, 2008, <sup>1</sup> stems from unfair labor practice charges that Local 412, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union) filed against Chrysler, LLC (Respondent or Chrysler). The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to provide the Union with information it requested that was necessary for,

<sup>&</sup>lt;sup>1</sup> All dates are in 2008, unless otherwise indicated.

and relevant to, the Union's performance of its duties in representing employees.

Pursuant to notice, I conducted a trial in Detroit, Michigan, on March 3, 2009, at which the parties had full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent and the General Counsel filed helpful posthearing brief that I have duly considered.

#### Issue

Did Respondent unlawfully fail and refuse to provide the Union with information it requested on July 17, 18, and 28, regarding Respondent's use of outsourced companies, and information it requested on July 28 concerning Envi, Chrysler's new hybrid-vehicle program?

#### Witnesses

Michael Hayes, the Union's chief steward for unit 1, testified for the General Counsel. Respondent called Morris Simms, Chrysler's senior manager of labor relations.

I will address credibility in the facts section. Apropos of this case, I note here the well-established precept that witnesses may be found partially credible: "[N]othing is more common in all kinds of judicial decisions than to believe some and not all' of a witness' testimony." *Jerry Ryce Builders*, 352 NLRB 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951). Rather, in evaluating its plausibility, a witness' testimony is appropriately weighed with the evidence as a whole. *Golden Hours Convalescent Hospitals*, 182 NLRB 796, 798–799 (1970).

#### Facts

Based on the entire record, including testimony, my observations of witness' demeanor, documents, and stipulations, I find the following.

Respondent, a corporation headquartered in Auburn Hills, Michigan, has offices, plants, and places of business throughout the United States, and is engaged in the manufacture, nonretail sale, and distribution of automobiles and automotive products. Jurisdiction has been admitted, and I so find.

Respondent's Auburn Hills facility (the facility) is the sole location germane to this proceeding. Thousands of employees work there, including about 400 employees in the Union's unit 1. The Union represents about 3500 persons in approximately 59 units, 19 of which consist of Chrysler employees. Units are comprised of districts.

The International UAW (the International) and Chrysler have been parties to a nationwide agreement for many years, the most recent effective by its terms from October 29, 2007–September 14, 2011.<sup>2</sup>

Since 1978, the International has assigned its representative responsibilities to the Union. At all times relevant, Respondent and the Union have been parties to a local supplemental agreement covering unit 1.<sup>3</sup> Page 18 thereof sets out some of unit 1's occupational groups, in the categories of designers, layout, and detailers. The Union's requests for information (RFI's) all

related principally to the 275-300 employees in these classifications.

#### The RFI's

Chrysler regularly utilizes outside contractors to perform outsourced work at the facility. On July 17, 18, and 28, Hayes, in his capacity as steward for Local 412, unit 1, district 4, made separate RFI's concerning seven such contractors, to Todd Frohner, then Respondent's union relations representative. They were for Magna Corporation, EDAG Corporation, FEV Engine Technology, MSX International, AMR Automotive Research India Private Limited, INCAT, and A.R.D.C.<sup>4</sup>

Aside from the company named, the RFI's were identical in key respects. Each opened with the statement that it was an RFI pursuant to a grievance investigation pertaining to three memoranda of understanding (MOU's) in the collective-bargaining agreement, and possibly to other provisions therein. The cited MOU's were: (M-3) joint activities; (M-6) new technology; and (M-10) sourcing.<sup>5</sup> Hayes went on to state:

In order for the Union to properly prepare and process for possible grievances, fulfill the unions [sic] contract administration and bargaining responsibilities, and to monitor and administer the collective bargaining agreement we request the following information from the Company.

Please inform the Union the following information pertaining to the engineering resource, [name of company], which is being utilized by Chrysler LLC.

This to include but not limited to:

A list of all programs and/or vehicles that engineering, design, packaging and prototype tasks are being performed for Chrysler LLC and its subsidiaries.

A complete Chrysler Development System (CDS) breakdown of the program.

If the engineering resource is not supplying total vehicle assistance and is just a component(s) resource please provide a list of the components that they are involved with.

For the six requests dated July 17 or 18, Hayes asked that the information be provided by July 28; for the seventh, dated July 28 (A.R.D.C.), he requested the information by August 3.

Hayes made these RFI's primarily to determine whether the Company's use of outsourcing violated any provisions of the collective-bargaining agreement, particularly with respect to performance of bargaining unit work.

Simms testified that Magna and MSX perform a great deal of work for Chrysler outside of the scope of unit 1 or district 4. He believed the same holds true for INCAT but was not knowledgeable about EDAC or FEV.

Also on July 28, Hayes made an RFI to Frohner, either by email or hand-delivery, for information pertaining to Chrysler's new Envi hybrid-vehicle program.<sup>6</sup> Referring to the three

<sup>&</sup>lt;sup>2</sup> GC Exh. 18.

<sup>&</sup>lt;sup>3</sup> GC Exh. 19.

<sup>&</sup>lt;sup>4</sup> GC Exhs. 2–8. All were emailed, with the possible exception of GC Exh. 8 (A.R.D.C.), which Hayes may have hand-delivered.

<sup>&</sup>lt;sup>5</sup> See GC Exh. 18 at 125–135, 143–147, & 201–214.

<sup>&</sup>lt;sup>6</sup> GC Exh. 9.

MOU's cited above, and repeating the same purposes as in the other requests, he asked for the following:

The scope of the program objectives.

Verification that International UAW has attended meetings to discuss the start of this program and all its intentions. Including names, dates and documentation supporting this notification.

A complete Chrysler Development System (CDS) break-down of the program.

A complete list of all Departments (Union and Nonunion) and organizations currently working on this program. This is to include Chrysler and any other outside parties.

Organizational charts for each of the departments requested in the previous bulletin item.

As with the RFI concerning A.R.D.C., Hayes asked Chrysler to provide the information by August 3.

# Events Prior to February 2009

Frohner responded by memorandum dated July 28, acknowledging receipt of the July 17 and 18 RFI's. He stated that he was in the process of gathering information to respond and that the Company's final response would be provided "within a reasonable period." By memorandum dated July 31, he made an identical response to the A.R.D.C. and Envi RFI's. 8

By an email of August 5 to Frohner, Hayes reiterated his RFI's with the exception of INCAT, the omission of which he did not notice in Frohner's memorandum. Hayes asked if all or part of the requested information was available for the Union to pick up.

Hayes testified without controversion, and I find, the following. In July, he had conversations with Frohner in meetings on unrelated matters, at which he asked the status of the requests. He recalled two specifically. The first was in early August, when Frohner replied that he had sent the requests to Chrysler's union relations department, which was working on obtaining the information. The second was at an August 20 grievance meeting, at which Frohner responded that said department was still working on it. Frohner also said that he could not identify AMR and asked if Hayes could recommend a point of contact to discuss the RFI. Hayes suggested a particular director.

In a September 5 email concerning a variety of topics, including Frohner's upcoming transfer to another location, Hayes asked Frohner the status of the RFI's. Hayes, by a September 16 email to Jeff Lofay, who had taken over for Frohner as union relations representative, asked for any or all of the requested information. He stated that in his last conversation with Frohner, on September 9, the latter had said that a named individual was still working on the project. By a September 18

email, Union Chair Richard Harter asked Lofay about any progress in obtaining the information. <sup>12</sup>

On September 30, Hayes emailed Thomas Groechel, Chrysler's human resources director. He reiterated the RFI's and requested the information by October 3.<sup>13</sup> In the last sentence. he stated, "Please do not offer alternatives such as a meeting with management or a discussion with Labor Relations. Labor relations and Chrysler Union Relations departments have had more than adequate time to obtain the requested data." Hayes testified that no one from Chrysler had previously made any offers for alternatives; rather, he put in this last sentence because he did not want what he deemed further stalling by the Company. I do believe that he considered Respondent to be stalling. Nonetheless, I find it implausible that he would have made this statement sua sponte and without some predicate in the way of management initiation of the subject. Regardless, no such management offers were put in writing or otherwise formally presented to the Union as proposals.

Lofay sent Hayes an email on October 14, referencing six of the RFI's. <sup>14</sup> He stated that the Company was "currently working to gather the previous information the Union requested" and that he would contact the Union "[a]s soon as the information is complied [sic]." This is the last written communication between the Union and Chrysler in evidence.

On October 7, the Union filed the charge underlying this proceeding. Respondent does not dispute the fact that it never provided the Union with any information in response to the RFI's.

# Communications in February 2009

The trial was initially scheduled for February 4, 2009. Respondent made an unopposed motion to postpone, which the Regional Director granted in a February 6, 2009 order. <sup>15</sup> At all times during settlement discussions, the General Counsel insisted on a formal Board settlement agreement and represented this as the Union's position.

Both Hayes and Simms testified about conversations they had before and after the Regional Director's postponement of the trial to March 3, 2009. The first conversation was on the late afternoon on about February 5, when Hayes called Simms into his office. <sup>16</sup> The second conversation was by telephone, about 2 weeks later. Their respective versions of the contents of their conversations were substantially similar, with one major exception.

In the first conversation, Simms suggested that they identify people who might be able to sit down and provide the requested information. He stated that some of the requests were quite broad, because Chrysler used companies such as Magna and MSX in many facets of the different processes, and should be narrowed. At one point, he gestured toward the stack of purchase orders that the procurement and supply department had

 $<sup>^{7}</sup>$  GC Exh. 10. He apparently inadvertently omitted reference to the INCAT RFI.

<sup>8</sup> GC Exh. 11.

<sup>&</sup>lt;sup>9</sup> GC Exh. 12.

<sup>&</sup>lt;sup>10</sup> GC Exh. 13.

<sup>&</sup>lt;sup>11</sup> GC Exh. 14.

<sup>&</sup>lt;sup>12</sup> GC Exh. 15.

<sup>&</sup>lt;sup>13</sup> GC Exh. 16. Attachments included the INCAT RFI.

<sup>&</sup>lt;sup>14</sup> GC Exh. 17. INCAT and A.R.D.C. were not included.

<sup>15</sup> GC Exh. 1(f).

<sup>&</sup>lt;sup>16</sup> Based on Simms' testimony on its foundation, which was more detailed and unequivocal than Hayes', who first indicated the conversation was in person but then stated that it was by telephone.

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run off for him. He and Hayes agreed that they would not be sufficient to satisfy the RFI's.

Simms described the difficulties that he had encountered in obtaining the information, including reductions in the union relations staff and in the work force overall, and organizational restructuring. In this regard, he asked Hayes if the Union would agree to a postponement of the trial so that the Company could have more time. Hayes replied that he was opposed to this. Simms also discussed a potential informal settlement agreement if the Company could get enough information to satisfy Hayes.

Either at this meeting (Simms' testimony), or in a phone conversation about 2 weeks later (Hayes' account), Simms offered to set up meetings between Hayes and managers to facilitate obtaining the information. Their testimony conflicted on whether the offer was conditional, and Hayes' response.

According to Simms, he imposed no conditions, and Haves responded that he would be interested in sitting down with the managers. Simms testified that after he received word of the postponement, he sent Hayes an email and asked if Hayes could work on the list of managers with whom to meet because they only had until March 3 (the new trial date) to start meeting, and they needed to get going quickly. When I asked Simms if that email was in the record, he answered, "I didn't bring it. I wish I had now."17 Simms further testified that he sent subsequent emails asking Hayes for the information but, again, none were produced at trial. Thus, without a satisfactory explanation, Respondent failed to provide documents in its possession that would reasonably be assumed to be favorable to its position (i.e., support Simms' version that his offer was unconditional and that Hayes agreed to it). Therefore, I draw an adverse inference against the credibility of Simms' testimony on this matter. See PCC Fabricators, Inc., 352 NLRB 701 fn. 5 (2008); Martin Luther King Sr. Nursing Center, 231 NLRB 15 fn. 1 (1977).

Contrary to Simms, Hayes recounted that Simms conditioned his offer upon the Union's agreement to an informal Board settlement agreement and/or a further postponement of the trial, and Hayes told him no.

Under all the circumstances, I find more plausible Hayes' version of Simms' offer and his response. First, I note Respondent's failure to produce purported documents that would have corroborated Simms' account. Second, Simms initiated their meeting on about February 5, when Respondent's motion for a postponement of the trial was pending, and Simms admittedly asked the Union to agree to such. Accordingly, I find that Simms' offer was conditional on the Union's agreement to an informal Board settlement agreement and/or further postponement of the trial.

# Analysis

An employer is obliged to supply information requested by a collective-bargaining representative that is necessary and relevant to the latter's performance of its responsibilities to the employees it represents. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

The information must be furnished in a timely fashion. *Beverly California Corp.*, 326 NLRB 153, 157 (1991); *Interstate Food Processing*, 283 NLRB 303, 306 (1987).

Respondent has raised several defenses. It first contends that the matter should be deferred to the parties' grievance-arbitration procedure under the *Collyer* doctrine. <sup>18</sup> However, the Board in recent decisions has strongly reaffirmed its longstanding policy of finding deferral inappropriate when the 8(a)(5) allegations pertain to failure to provide information. See *Medco Health Solutions of Spokane*, 352 NLRB 640 (2008); *Team Clean, Inc.*, 348 NLRB 1231 fn. 1 (2006).

Respondent's brief cites (at 6) a single case in support of its position: *United Aircraft Corp.*, 204 NLRB 879 (1973), affd. sub nom. *Machinists Lodges 700, 743, 1746 v. NLRB*, 525 F.2d 237 (2d Cir. 1975). Seven years ago, Respondent cited the same case to the D.C. Circuit Court of Appeals, when it sought Board deferral of another information-request case, in *DaimlerChrysler Corp.*, 288 F.3d 434 (2002). The court was not persuaded, stating (at 445):

United Aircraft is an almost 30-year-old case that does not represent the Board's current policy of the application of Collyer to information-request cases. And United Aircraft is the only case cited by CD in support of its position. At oral argument before this court, DC's counsel acknowledged that the Board's policy since United Aircraft has been entirely consistent in holding that information cases will not be deferred under Collyer....

For those reasons, *United Aircraft* is not viable authority, and Respondent's deferral argument fails.

Alternatively, Respondent raises three contentions. I note that at no time prior to February 2009, when the matter was already scheduled for trial, did Respondent voice any objections to complying with the RFI's.

The first is that a provision of MOU M-10 provides that the Union has the right to written notification of any contemplated outsourcing decision, <sup>19</sup> and it therefore already received the requested information. Since determining Respondent's compliance with MOU M-10 was one of the reasons for the RFI's, this contention warrants no serious consideration, especially when Respondent has produced no evidence of any such notification.

The second is that the Union failed to demonstrate relevance. In analyzing relevance, the Board's distinguishes between requested information relating directly to the terms and conditions of represented employees, and requested information concerning matters outside of the bargaining unit.

The former is presumptively relevant. Beverly Health & Rehabilitation Services, 328 NLRB 885, 888 (1999); Samaritan Medical Center, 319 NLRB 392, 397 (1995). This includes information pertinent to a union's decision to file or process grievances. Beth Abraham Health Services, 332 NLRB 1234 (2000); Bell Telephone Laboratories, 317 NLRB 802, 803 (1995), enfd. mem. 107 F.3d 862 (3d Cir. 1997). The Envi RFI largely fell into this category.

<sup>17</sup> Tr. 107.

<sup>&</sup>lt;sup>18</sup> See Collyer Insulated Wire, 192 NLRB 837 (1971).

<sup>&</sup>lt;sup>19</sup> GC Exh. 18 at 212.

As to the latter, a union bears the burden of establishing its relevance and need. *Racetrack Food Services*, 353 NLRB No. 76 (2008); *Tri-State Generation*, 332 NLRB 910 (2000). This includes information about the subcontracting of work, even if it impacts on bargaining unit employees' terms and conditions of employment. *Disneyland Park*, 350 NLRB 1257 (2007); *Richmond Health Care*, 332 NLRB 1304, 1307 fn. 1 (2000); *Associated Ready Mixed Concrete, Inc.*, 318 NLRB 318 (1995), enfd. 108 F.3d 1182 (9th Cir. 1997); *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). Thus, the RFI's concerning outsourced companies, and to the Envi RFI, in part, were in this category.

In determining whether such a burden has been met at the trial level, the Board applies a liberal, discovery-type standard. *Hamilton Sundstrand*, 352 NLRB 482 (2008), *Disneyland Park*, above. The General Counsel can establish relevance by presenting evidence that either (1) the union demonstrated the relevance of the information, or (2) the relevance of the information should have been apparent to the employer under the circumstances. Ibid. The burden is not "an exceptionally heavy one, requiring only a showing be made of a 'probability that the requested information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997), enfd. 157 F.3d 222 (3d Cir. 1998), quoting *Acme Industrial Co.*, supra at 437.

Here, the RFI's referenced specific MOU's in the collectivebargaining agreement, requested certain types of information, and stated that the Union sought the information for, inter alia, possible grievances.

Respondent never raised lack of relevance as a basis for not furnishing the information sought. Indeed, both in written communications and orally, management repeatedly stated that Chrysler was making efforts to obtain the information and would provide it.

I conclude, therefore, that the requested information was relevant and necessary to the Union's representation of unit employees, based both on the contents of the RFI's, and Chrysler's responses. For the same reasons, I conclude that the presumptively relevant portions of the Envi RFI, if severed for analysis, were relevant and necessary.

Finally, I turn to Respondent's claim that its delay in furnishing the information was justified due to the expansive nature of the requests. At the February 2009 meeting, Simms alluded to the broad scope of the RFI's, in particular with regard to two of the companies, and to the difficulties that his office had had in compiling information. He did not state that obtaining the information would be "burdensome" as such. Assuming he had, a mere assertion that the information request is overly broad to the point of being burdensome does not suffice to relieve an employer from the obligation to provide relevant information. Rather, the employer must establish that the expense, labor, and or resources required to fulfill the request rise to the level of burdensome. Pulaski Construction Co., 345 NLRB 932, 938 (2005); Goodyear Atomic Corp., 266 NLRB 890, 891 (1983), enfd. 738 F.2d 155 (6th Cir. 1984); Colgate Palmolive, 261 NLRB 90 (1982). Neither Simms in his conversations with

Hayes, nor Respondent at trial, offered any evidence showing this.

I note that the situation here is distinguishable from those in which an employer has at some point furnished all or some of the information sought; Respondent has never provided anything, timely or otherwise.

Accordingly, Respondent's defenses fail. Absent demonstration of a valid defense, an employer is obliged to furnish information found relevant. *Beth Abraham Health Service*, supra at 1235; *Woodland Clinic*, 331 NLRB 735, 737 (2000).

Based on all of the above, I conclude that Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish to the Union the requested information.

# CONCLUSIONS OF LAW

- 1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 3. By the following conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act:
- (a) Failed and refused to provide to the Union information that the Union requested about Respondent's use of outsourced companies at its headquarters facility.
- (b) Failed and refused to provide to the Union information that the Union requested about Respondent's Envi hybridvehicle program at its headquarters facility.

### REMEDY

Because Respondent has engaged in unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel seeks a broad cease-and-desist order, contending that Respondent has demonstrated a proclivity to violate the Act by engaging in a pattern of failing to provide the Union with information. The General Counsel cites the following cases, in which Respondent was found to have so violated Section 8(a)(5) (listed in order of issuance date, latest first, with the particular units of the Union involved, and the dates of the RFI's):<sup>20</sup>

- DaimlerChrysler Corp., 344 NLRB 1324 (2005) unit 53, 1999.
- DaimlerChrysler Corp., 344 NLRB 772 (2005) units 4 and 21, April–September 2003.
- 3. *DaimlerChrysler Corp. v. NLRB*, supra—unit 53, 1997 and 1998.
- 4. DaimlerChrysler Corp., JD-133-99 (1999)—unit 1, 1998.

These cases concerned Respondent's actions over a period extending from 1997–2003, and going back as far as 12 years. In view of their remoteness in time, I have conceptual difficulty

<sup>&</sup>lt;sup>20</sup> Because the fifth case cited by the General Counsel, *Chrysler*, *LLC*, JD–48–08 (2008) (unit 1), is an ALJD pending before the Board on Respondent's exceptions, it is not a final adjudication that can be considered for evidentiary purposes.

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finding that they have a relevant nexus to the matter before me. Moreover, the record is silent on how many information requests the Union has made of Respondent since 1997, and the number of occasions when Respondent provided information to the Union's satisfaction. As a result, the above violations cannot be evaluated in any kind of meaningful context.

For these reasons, I conclude that the General Counsel has not established that Respondent has engaged in recent years in a pattern or practice of failing to provide the Union with requested information or of otherwise violating the Act. Accordingly, a broad cease-and-desist order is unwarranted, and I deny the General Counsel's request for such.

# **ORDER**

The Respondent, Chrysler, LLC, Auburn Hills, Michigan, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to provide the Union with information the Union requests that is relevant and necessary to its role as the collective-bargaining representative of employees.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights Section 7 of the Act guarantees to them.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Timely furnish the Union with the information it requested about Respondent's use of outsourced companies at its Auburn Hills, Michigan headquarters operations.
- (b) Timely furnish the Union with the information it requested about Chrysler's Envi hybrid-vehicle program at that location.
- (c) Within 14 days after service by the Region, post at its facility in Auburn Hills, Michigan, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings,

Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 17, 2008.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 1, 2009

# APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

# FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

We recognize Local 412, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL—CIO (the Union) as the bargaining representative of employees described in our 2007–2011 collective-bargaining agreement with the International UAW, and in local supplemental agreements.

WE WILL NOT fail and refuse to provide the Union with information it requests relating to our use of outsourced companies at our Auburn Hills, Michigan headquarters facility; our Envi hybrid-vehicle program at that facility; or otherwise is relevant and necessary for the Union's performance of its duties as your collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act, as set forth at the top of this notice.

WE WILL timely furnish the Union with the information it requested about our use of outsourced companies at our Auburn Hills, Michigan headquarters facility, and about our Envi hybrid-vehicle program at that facility.

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<sup>21</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."